



U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a corporation that provides residential care for the elderly at its six home care facilities. In order to employ the beneficiary as an interior design specialist, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that it would actually employ the beneficiary in interior design duties that comport with a specialty occupation position as set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director indicated that the petitioner had not convinced him that the beneficiary would be performing duties that would “require the theoretical and practical application of specialized knowledge obtained through the attainment of a bachelor’s or higher degree” for the three-year period specified in the petition.

On appeal, counsel contends that the evidence of record establishes that the petitioner is acting in accordance with its business judgment of what is best for its expansion and competitive advantage. Counsel asserts that the petition should have been granted because the petitioner established that the proposed duties are so specialized and complex as to qualify the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director’s decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the director’s request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief.

According to the petitioner’s June 14, 2003 letter of support that was submitted with the Form I-129, the petitioner operates six residential care homes for the elderly, and it is “actively engaged in adding facilities, remodeling the existing ones, and constantly maintaining and monitoring the integral structure of the premises.” The letter also states the petitioner “requires in-house engineering and architectural services in order to sustain our ‘**continuing needs**’ to add, develop and maintain health facilities that suit the needs of our resident-patients.” (Emphasis in the original.) According to the letter, as the person “primarily responsible for development and management of complex interior design and space planning projects for newly constructed and renovated facilities,” the beneficiary would perform these duties, “among others”:

- conferring with the company’s Project Manager to lay-out interior design requirements, clarify needs and develop solutions and recommendations for interior design projects;
- providing architectural design and working drawings with specifications and cost estimates; providing interior design layouts and color selection boards for design approvals;

- planning of interior construction, finishes and furnishings complementary to designs; preparing specifications for the bidding process;
- processing requisitions based on designs and finishes with cost estimates; and supervising interior design project after award of bid to assure work is performed as specified or ordered;
- reviewing and approving invoices after delivery, construction, or installation;
- working with outside consultants on major projects and supervising projects from initial concept through completion of final design; conducting site supervision of construction activities, finishes, and furniture installation;
- maintaining knowledge of the most recent developments of and future trends in interior design, finishes, color and spatial relationships, furniture and product availability and durability;
- developing quality standards for finishes and furnishings, carpeting, window treatments, and wall coverings;
- maintaining files of design documents of both existing and new construction.

The letter also states that the petitioner's interior design specialist must have "abilities and skills to prepare architectural drawings and specifications for interior design; and to conceptualize and create interior design systems to achieve effective use of facility space and furnishings." Furthermore, this person must have "considerable knowledge of interior finishes and furnishings, lighting, color and spatial relationships, furniture, and electrical communications location, building structures including interior construction, building systems, equipment and components."

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States. (Italics added.)

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The director was correct in his determination that the petitioner did not establish that the beneficiary would be engaged in specialty occupation duties for the three-year period that the petitioner has specified. As correctly stated by the director, the petitioner bears the statutory burden to prove that it is entitled to have its petition approved. Here, however, as fairly reflected in the director’s decision, the petitioner has identified no particular projects that would engage the beneficiary, has provided no concrete job details, and has presented no work schedules or any other evidence that would establish that for his three H-1B years, or even any specific amount of that time, the beneficiary would be applying at least a bachelor’s degree level of knowledge in a particular specialty.

Even if the AAO were to assume that at least a bachelor's degree level of highly specialized knowledge in a specific specialty would be required for such activities that the petitioner generally describes as conferring with the unidentified project engineer, planning interior construction, preparing specifications for the bidding process, and involvement in what the petitioner generally describes as "major projects," the petitioner has failed to establish that the beneficiary would be engaged in such work. The petitioner's line of work is to provide residential nursing care for the elderly. The evidence of record does not identify when, if ever, any of the interior design activities would occur; how long they would continue; and how much of the beneficiary's worktime they would require. On the basis of the record before it, the AAO cannot conclude that there would be anything like a three-year requirement for the application of the highly specialized knowledge of a bachelor's degree level of knowledge in a specific specialty. The petitioner provided no evidence of the proposed construction projects. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Also, the AAO specifically finds that there is no merit to counsel's contention on appeal that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As the record does not establish any concrete timeline for the execution of the constellation of duties listed by the petitioner, performance of the duties in any substantial combination is speculative. Therefore, the petitioner has not established that, as required by this criterion, "the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree."

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.